

AMENDED IN ASSEMBLY MAY 3, 2000
AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2403

Introduced by Assembly Member Maddox

February 24, 2000

An act to amend Sections 50302, 50314, and 50401 of the Financial Code, relating to residential mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 2403, as amended, Maddox. Residential mortgage lending.

Existing law, the California Residential Mortgage Lending Act, sets annual assessments to be paid to the commissioner by licensees based on a pro rata share of total administrative costs to operate the program and a percentage of the income of each licensee. *Existing law requires licensees to pay the cost of all nonroutine examinations by the commissioner.*

This bill would remove obsolete portions of ~~these~~ *the assessment* provisions. This bill would revise the time and method for determining the annual assessments to be paid by licensees. *This bill would require licensees to pay the cost of all examinations by the commissioner.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50302 of the Financial Code is
2 amended to read:

3 50302. (a) As often as the commissioner deems
4 necessary and appropriate, but at least once every 48
5 months, the commissioner shall examine the affairs of
6 each licensee for compliance with this division. The
7 commissioner shall appoint suitable persons to perform
8 the examination. The commissioner and his or her
9 appointees may examine the books, records, and
10 documents of the licensee, and may examine the
11 licensee's officers, directors, employees, or agents under
12 oath regarding the licensee's operations. The
13 commissioner may cooperate with any agency of the state
14 or federal government, other states, agencies, the federal
15 national mortgage association, or the federal home loan
16 mortgage corporation. The commissioner may accept an
17 examination conducted by one of these entities in place
18 of an examination by the commissioner under this law,
19 unless the commissioner determines that the
20 examination does not provide information necessary to
21 enable the commissioner to fulfill his or her
22 responsibilities under this division.

23 (b) The commissioner shall provide a written
24 statement of the findings of the examination, issue a copy
25 of that statement to each licensee's principals, officers, or
26 directors, and take appropriate steps to ensure correction
27 of any violations of this division.

28 (c) Affiliates of a licensee are subject to examination
29 by the commissioner on the same terms as the licensee,
30 but only when reports from, or examination of, a licensee
31 provides documented evidence of unlawful activity
32 between a licensee and affiliate benefiting, affecting, or
33 arising from the activities regulated by this division.

34 (d) The licensee shall pay, and the commissioner shall
35 assess, the reasonable expenses of ~~a nonroutine~~
36 ~~regulatory~~ any examination of the licensee and affiliates,
37 *consistent with the requirements of subdivision (c) of*
38 *Section 50314.*

(e) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

SEC. 2. *Section 50314 of the Financial Code is amended to read:*

50314. (a) Every person subject to this division shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage lending or residential mortgage loan servicing functions performed by that person comply with the provisions of this division and with all rules and orders made by the commissioner under this division. Upon request of the commissioner, residential mortgage lenders and residential mortgage loan servicers shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

(b) The business documents and records of every residential mortgage lender or residential mortgage loan servicer, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this subdivision shall not apply to persons specified in subdivision (g) of Section 50003.

Any person subject to this division shall, upon request and within the time specified in the request, allow inspection and copying of any documents and records by the commissioner or his or her authorized representative.

(c) The cost of every ~~nonroutine~~ inspection and examination of a licensee or other person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost of—a

1 ~~nonroutine~~ any inspection or examination, the
2 commissioner may use the estimated average hourly cost,
3 including overhead, for all persons performing
4 inspections or examinations of licensees or other persons
5 subject to this division for the fiscal year.

6 For the purpose of this subdivision only, no person
7 other than a licensee shall be deemed to be a person
8 subject to this division unless and until the person is
9 determined to be a person subject to this division by an
10 administrative hearing in accordance with Chapter 5
11 (commencing with Section 11500) of Part 1 of Division 3
12 of Title 2 of the Government Code, or by a judicial
13 hearing in any court of competent jurisdiction.

14 (d) Investigation and examination reports prepared
15 by the commissioner's duly designated representatives
16 are not public reports. Those reports may be disclosed to
17 the officers or directors of a licensee that is the subject of
18 the report for the purpose of corrective action by the
19 officers or directors. Such a disclosure shall not operate as
20 a waiver of the exemption specified in subdivision (d) of
21 Section 6254 of the Government Code.

22 SEC. 3. Section 50401 of the Financial Code is
23 amended to read:

24 50401. (a) In addition to other fees and
25 reimbursements required to be paid under this division,
26 each licensee shall pay to the commissioner an amount
27 ~~equal to the greater of: (1) its pro rata share of all costs~~
28 ~~and expenses (including routine regulatory~~
29 ~~examinations, overhead, and the maintenance of a equal~~
30 ~~to the lesser of: (1) its pro rata share of all costs and~~
31 ~~expenses (including overhead and the maintenance of a~~
32 prudent reserve not to exceed 90 days' costs and
33 expenses) that the commissioner reasonably expects to
34 incur in the next fiscal year in the administration of this
35 division and not otherwise recovered by the
36 commissioner under this division or from the State
37 Corporations Fund, plus a deficit or less a surplus actually
38 incurred during the current fiscal year; or (2) five
39 thousand dollars (\$5,000). The pro rata share shall be the
40 *greater of either one thousand dollars (\$1,000) or the sum*

1 of: (A) a number derived from the ratio of the aggregate
2 principal amount of the mortgage loans secured by
3 residential real property originated by the licensee to all
4 mortgage loans secured by residential real property
5 originated by all licensees under this division, as shown by
6 the annual financial reports to the commissioner, which
7 number is then multiplied by one-half of the costs and
8 expenses estimated by the commissioner for the next
9 fiscal year; plus (B) a number derived from the ratio of
10 the average value of mortgage loans secured by
11 residential real property serviced by a licensee to the
12 average value of all mortgage loans secured by residential
13 real property serviced by all licensees under this division,
14 as shown by the annual financial reports to the
15 commissioner, which number is then multiplied by
16 one-half of the costs and expenses estimated by the
17 commissioner for the next fiscal year. For the purposes of
18 this section, the “principal amount” of a mortgage loan
19 means the initial total amount a borrower is obligated to
20 repay the lender and the “average value” of loans
21 serviced means the sum of the aggregate dollar value of
22 all mortgage loans secured by residential real property
23 serviced by a licensee, calculated as of the last day of each
24 month in the calendar year just ended, divided by 12.

25 In order for the commissioner to calculate the
26 assessment under this section, each licensee shall file an
27 annual report for the calendar year just ended containing
28 the information required by the commissioner on or
29 before March 1 of the year in which the assessment is to
30 be calculated.

31 In determining the amount assessed, the commissioner
32 shall consider all appropriations from the State
33 Corporations Fund for the support of this division and all
34 reimbursements provided for under this division.

35 (b) In no case shall the reimbursement, payment, or
36 other fee authorized by this section exceed the cost,
37 including overhead, reasonably incurred in the
38 administration of this division, and the maintenance of a
39 prudent reserve not to exceed 90 days’ costs and expenses.

1 (c) On or before the 30th day of August in each year,
2 the commissioner shall notify each licensee by mail of the
3 amount assessed and levied against it and that amount
4 shall be paid within 20 days. If payment is not made within
5 20 days, the commissioner shall assess and collect a
6 penalty, in addition to the assessment of 1 percent of the
7 assessment for each month or part of a month that the
8 payment is delayed or withheld.

9 (d) If a licensee fails to pay the assessment on or before
10 the 30th day ~~of June~~ following the day upon which
11 payment is due, the commissioner may by order
12 summarily suspend or revoke the license issued to the
13 licensee. An order issued under this section is not stayed
14 by the filing of a request for a hearing. If, after an order
15 is made, the request for hearing is filed in writing within
16 15 days from the date of service of the order and a hearing
17 is not held within 60 days of the filing, the order is deemed
18 rescinded as of its effective date. During a period when
19 its license is revoked or suspended, a licensee shall not
20 conduct business pursuant to this division except as may
21 be permitted by further order of the commissioner.
22 However, the revocation, suspension, or surrender of a
23 license shall not affect the powers of the commissioner as
24 provided in this division.

